

## **The Closer You Get, the Harder You Fall: Practical and Ethical Challenges for Family Law Practitioners**

by

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“Find a competent trial lawyer and make him your boyfriend.”<sup>1</sup> That language may seem like the punch line to one of the ubiquitous jokes made at the expense of the legal profession. However, the origin of that quote is anything but funny. It is, in fact, the advice a Connecticut lawyer admitted that he would give to a woman going through a divorce.<sup>2</sup> The lawyer reasoned that “a lawyer’s love and affection for his client is a motivating factor to give – to go the extra mile.”<sup>3</sup> Perhaps not surprisingly, a Connecticut trial court and the Connecticut Appellate Court disagreed, finding that the lawyer’s intimate, non-sexual relationship with a client that he represented in a divorce action constituted a conflict of interest for which the attorney received a five month suspension.<sup>4</sup>

If asked on the street, or the courthouse steps, most lawyers would likely acknowledge that intimate relationships with clients are inappropriate. Nonetheless, as explored herein, the Connecticut lawyer is not alone in failing to see the ethical danger posed by his relationship with his client. While the reasons for that relationship and for those lawyer-client relationships that do actually become sexual, will vary from case to case, they likely stem from a situation where a lawyer’s ability to provide effective advocacy

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<sup>1</sup> Chief Disciplinary Counsel v. Zelotes, 98 A.3d 852, 861 n.4 (Conn. App. Ct.), *cert. denied*, 102 A.3d 1116 (Conn. 2014).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> *Id.* at 858, 873.

for a client has broken down. Clearly, a lawyer must have a productive working relationship with their client to be an effective advocate. However, there are significant practical and ethical risks associated with a lawyer becoming enmeshed in a personal relationship with the client.

The risk of potential violations begins when a lawyer's personal relationship with a client prevents the lawyer from meeting his or her basic duty to provide competent, conflict-free representation, while maintaining confidentiality and exercising independent judgment.<sup>5</sup> Additional potential violations include neglecting the client's case when the client becomes overly needy and/or suffering from compassion fatigue when the lawyer absorbs the client's emotional turmoil and trauma.<sup>6</sup> This article examines just a few of the ways in which emotional relationships between lawyers and clients, no matter how innocent they may seem or well-intentioned they may be, can pose significant risk to lawyers' abilities to meet their professional duties and their ethical responsibilities.

## **I. The Challenges of a Family Law Practice**

Obviously, family law practitioners have to provide the same services to clients as any other lawyer. They have to communicate with and advise clients regarding their legal rights and responsibilities. Ongoing representation requires any lawyer to: gather and analyze facts; research and stay current on the law; interpret and apply legal principles; and, effectively interact with opposing parties, counsel and courts. However, family law practitioners must provide that myriad of service to clients who are often going through one of the most stressful experiences of their lives. A family law proceeding can pose a threat to parties on the deepest emotional level and may threaten what parties value most: their children; their home; and, their financial stability. The resulting client emotions can make client communication and expectation management particularly challenging. Family law practitioners may find the counseling part of their representation

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<sup>5</sup> See MODEL RULES OF PROF'L CONDUCT R. 1.1, 1.2, 1.3, 1.4, 1.6

<sup>6</sup> See, e.g., COMPASSION FATIGUE: COPING WITH SECONDARY TRAUMATIC STRESS DISORDER IN THOSE WHO TREAT THE TRAUMATIZED (Charles R. Figley ed., 1995).

extending past legal issues, into areas that are better addressed by a mental health professional, not a lawyer.

Those raw client emotions present in a variety of ways. A sense of anger and/or injustice can often spill over into malpractice actions against the client's attorney, as well as disciplinary complaints against the opposing party's attorney and the client's own attorney. Most family law practitioners will anecdotally report on how their clients' anger, sadness and any number of other feelings bleed into their legal representation. An unknown number of competent lawyers may shy away from the practice of family law because of the intense emotional needs of the clients, as well as the resultant increase in malpractice actions and disciplinary board complaints. Indeed, in jurisdictions that track disciplinary complaints by area of practice, family law practitioners are often more likely to be the subject of a disciplinary complaint as compared to most other areas of the law.<sup>7</sup>

But just as a lawyer may become the subject of a client's anger and frustration, so too may the lawyer become a source of comfort to a client who is in a state of emotional distress. When the lawyer initiates or reciprocates an intimate or close, personal affection for or emotional attachment to the client, the lawyer may soon encounter a host of ethical problems, including violations of Model Rules of Professional Conduct 1.1 (competence); 1.2 (failure to follow client instructions); 1.3 (diligence); 1.4 (communication); and 1.6 (keeping client confidences). For that reason, the *American Academy of Matrimonial Lawyers Divorce Manual: A Client Handbook* cautions that:

Sometimes friendships and even romances develop between lawyers and clients.

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<sup>7</sup> See, e.g., ANNUAL REPORT OF LAWYER DISCIPLINE IN SOUTH CAROLINA 2016-17 at 2, <https://www.sccourts.org/discCounsel/CLC2017.pdf> ("domestic" matters constitute the second highest category of disciplinary complaints); COLORADO OFFICE OF ATTORNEY REGULATION COUNSEL 2016 ANNUAL REPORT at 68, chart E-4, <https://www.coloradosupremecourt.com/PDF/AboutUs/Annual%20Reports/2016%20Annual%20Report.pdf> (finding "family law" having the highest number of complaints by practice area); ILLINOIS ATTORNEY REGISTRATION & DISCIPLINARY COMMISSION 2017 ANNUAL REPORT at 25, chart 10, <https://www.iardc.org/AnnualReport2017.pdf> (noting that domestic relations attorneys have the second highest category of docketed charges by area of law). (available at

466 *Journal of the American Academy of Matrimonial Lawyers*

Many lawyers have close personal friendships with former clients. But because of the intense emotional nature of a divorce, it is usually best for lawyers and clients to defer establishing a social relationship until after the case is over.

Romantic relationships are not advisable as they interfere with a lawyer's objectivity and affect a client's expectations. A divorce lawyer and a client should never have a sexual relationship during the case.<sup>8</sup>

## II. Particular Ethical Pitfalls

### A. Sexual Relationships with Clients

In 2002, the American Bar Association ("ABA") modified the Model Rules of Professional Conduct (the "Model Rules") to prohibit lawyers from engaging in sexual relations with a client unless the sexual relationship preexisted the formation of the attorney-client relationship.<sup>9</sup> The majority of the states have followed the ABA Model Rules' ban on sexual contact between a lawyer and the lawyer's client by: (a) expressly adopting the language of Model Rule 1.8(j); (b) including it in another rule of the jurisdiction's rules of professional conduct; or (c) including the principles of 1.8(j) in the commentary to another of the jurisdiction's rules of professional conduct.<sup>10</sup>

Thus, it is fairly well-settled that most jurisdictions consider a sexual relationship between a lawyer and their client to be a violation the Rules of Professional Conduct. Nonetheless, such conduct continues to be the subject of disciplinary proceedings throughout the country. For example, in the Wisconsin case of *Disciplinary Proceedings Against Atta*, Attorney Atta repre-

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<sup>8</sup> AMERICAN ACADEMY OF MATRIMONIAL LAWYERS DIVORCE MANUAL: A CLIENT HANDBOOK, Section VI. The Lawyer-Client Relationship, Subparagraph (D) Lawyers and Clients Should Maintain an Appropriate Professional Reputation (1994), <http://aaml.org/library/publications/415/divorce-manual-client-handbook/>.

<sup>9</sup> MODEL RULES OF PROF'L CONDUCT R. 1.8(j) (2002) ("A lawyer shall not have sexual relations with a client unless a consensual sexual relationship existed between them when the client-lawyer relationship commenced").

<sup>10</sup> American Bar Association, CPR Policy Implementation Committee, *Variations of the ABA Model Rules of Professional Conduct, Rule 1.8(j)*, [https://www.americanbar.org/content/dam/aba/administrative/professional\\_responsibility/mrpc\\_1\\_8j.authcheckdam.pdf](https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/mrpc_1_8j.authcheckdam.pdf) (last visited Sept., 29, 2017).

sented a woman in a divorce and immigration matter.<sup>11</sup> Shortly after the representation began, Atta's and the client's relationship became increasingly personal. They began meeting for lunch and dinner, then having lengthy, late-night phone conversations that included discussions of marriage and other intimate topics.<sup>12</sup> Eventually Atta and the client engaged in sexual relations.<sup>13</sup>

As is often the case, the intimate relationship between the attorney and the client deteriorated and the client ended the relationship before conclusion of her divorce.<sup>14</sup> While the underlying reasons for termination of that relationship may be known only to the parties themselves, it is clear that the lawyer's representation of his client diminished considerably thereafter. For instance, despite the court holding a final hearing on the divorce in March, 2013, Atta failed to file proposed findings of fact, conclusions of law, and judgment in the matter until mid-June, 2013.<sup>15</sup> Further, when he finally provided the proposed findings to the client, Atta copied his brother on the client's email without the client's consent.<sup>16</sup>

The client subsequently complained to Wisconsin attorney regulatory authorities alleging that Atta intentionally delayed filing the necessary divorce documents as a result of her terminating the personal relationship.<sup>17</sup> She specifically alleged that Atta had "taken advantage of her by engaging in a sexual relationship with her while she was in an emotional stage of her life."<sup>18</sup> The Wisconsin Supreme Court determined that Atta violated Wisconsin Rule SCR 20:1(8)(j) by having sexual relations with a client while representing her in a divorce, and reprimanded Atta for his misconduct.<sup>19</sup> Thus, even what begins as a potentially consensual sexual relationship between a lawyer and their client is unacceptable in most jurisdictions given the threat posed to a lawyer's ability to meet their professional duty and ethical obligations

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<sup>11</sup> Disciplinary Proceedings Against Atta, 882 N.W.2d 810, 811 (Wis 2016).

<sup>12</sup> *Id.* .

<sup>13</sup> *Id.*

<sup>14</sup> *Id.* at 811-12.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.* at 812.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Id.* at 813, 814.

during and after such a relationship. A potentially related question, which is outside the scope of this analysis, is whether an emotionally vulnerable client can effectively consent to a sexual relationship with the perceived authority figure that is their counsel.

Further, consummation of a desired sexual relationship with a client, or reciprocation of such a desire, is not necessary to state a violation of at least one jurisdiction's variation of Model Rule 1.8(j). Specifically, in *Disciplinary Counsel v. Detweiler*, attorney Detweiler was retained to represent a woman in a divorce in Ohio.<sup>20</sup> After Detweiler filed the divorce complaint, he began texting the client, initially about innocuous social topics such as football.<sup>21</sup> The texts subsequently turned to comments of a sexual nature, including Detweiler's stated desire to have sex with the client.<sup>22</sup> Detweiler also sent the client a nude photo of his lower body in a state of sexual arousal.<sup>23</sup> The client did not immediately terminate Detweiler's representation because by the time she received the nude photograph, she had already spent ten thousand dollars (\$10,000.00) in fees and expenses in the divorce case, and she could not afford to hire substitute counsel.<sup>24</sup>

At no time did Detweiler and the client engage in a sexual relationship.<sup>25</sup> Indeed, they never even met socially.<sup>26</sup> Nevertheless, the Ohio Supreme Court adopted a stipulation between Detweiler and the Board of Commissioners on Grievances and Discipline that Detweiler had violated Ohio Rule of Professional Conduct 1.8(j), which prohibits a lawyer from soliciting or engaging in sexual activity with a client unless a consensual sexual relationship preexisted the legal relationship.<sup>27</sup> Based upon Detweiler's repeated, unsolicited advances toward a vulnerable client, and the fact that he "upped the ante by sending her a nude photograph of himself" after the client ignored the advances, the

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<sup>20</sup> *Detweiler*, 989 N.E.2d 41, 42 (Ohio 2013).

<sup>21</sup> *Id.*

<sup>22</sup> *Id.* at 42-43.

<sup>23</sup> *Id.* at 43.

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

court concluded that protection of the public warranted the court suspending Detweiler from the practice of law for one year.<sup>28</sup>

On its face, the idea of sexual relationships, or attempted sexual relationships, between lawyers and their clients seem inappropriate, at best. However, the prohibition against such relationships goes beyond propriety or social mores; it is linked to the very foundation of a lawyer's ethical responsibility and professional duty. The rationale behind the ban on an attorney and client engaging in a sexual relationship is well-stated in the commentary to the Rule:

The relationship between lawyer and client is a fiduciary one in which the lawyer occupies the highest position of trust and confidence. The relationship is almost always unequal; thus, a sexual relationship between lawyer and client can involve unfair exploitation of the lawyer's fiduciary role, in violation of the lawyer's basic ethical obligation not to use the trust of the client to the client's disadvantage. In addition, such a relationship presents a significant danger that, because of the lawyer's emotional involvement, the lawyer will be unable to represent the client without impairment of the exercise of independent professional judgment. Moreover, a blurred line between the professional and personal relationships may make it difficult to predict to what extent client confidences will be protected by the attorney-client evidentiary privilege, since client confidences are protected by privilege only when they are imparted in the context of the client-lawyer relationship.<sup>29</sup>

In short, the emotional entanglement attendant to the consummated or desired sexual relationship can quickly compromise an attorney's duties of competence and result in a violation of Model Rule of Professional Conduct 1.1, when the lawyer loses objectivity and fails to exercise sound professional judgment as a result of the intimate relationship with the client. Likewise, the lawyer's personal relationship with the client blurs the line between client communications, protected by Model Rule 1.6 and the attorney-client privilege, and personal communications which enjoy no such protections. The attendant risk of the client's confidences being improperly shared rises dramatically in such circumstances. Perhaps most fundamentally, the lawyer's own

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<sup>28</sup> *Id.* at 45. This was not the first time Detweiler had been sanctioned in Ohio. In October, 2010 Detweiler was publicly reprimanded for engaging in an improper sexual relationship with a client. *See Disciplinary Counsel v. Detweiler*, 936 N.E.2d 498 (Ohio 2010).

<sup>29</sup> MODEL RULES OF PROF'L CONDUCT R. 1.8(j) cmt. 17 (2018).

470 *Journal of the American Academy of Matrimonial Lawyers*

interest in maintaining a personal relationship with the client now places the lawyer in conflict with his or her client's best interests and results in a violation of Model Rule 1.7. These risks are particularly acute in the family law setting where "[t]he emotional vulnerability of clients undergoing the termination of an often-lengthy marriage, and the sometimes perceived betrayal of the spouse, renders such a client particularly dependent upon the lawyer."<sup>30</sup> Obviously, the only advice for the attorney here is to completely refrain from any type of sexual contact with a client.

*B. Non-Sexual Intimate Relationships with Clients*

It is clear that a sexual relationship between a lawyer and client is prohibited. However, a lawyer developing a non-sexual but otherwise romantic or intimate relationship with a client during the course of representing the client is not without ethical peril. Model Rule 1.7 specifically provides that "a lawyer shall not represent a client if the representation involves a concurrent conflict of interest."<sup>31</sup> In turn, "a concurrent conflict of interest exists if . . . there is a significant risk that the representation of one or more clients will be materially limited by . . . a personal interest of the lawyer."<sup>32</sup> Obviously an attorney falling in love with a client implicates the attorney's own personal interests and that carries with it the risk of the attorney's professional judgment being clouded by the attorney's emotional involvement with the client. Again, the risk of this sort of emotional entanglement is even more prevalent for family law practitioners than those lawyers who practice in other areas, given that concepts of love, partnership, and marriage are inextricably linked to the work of dismantling a relationship. Even more problematic is the ongoing nature of family law cases, and the potential emotional relationship can arise at any point

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<sup>30</sup> RONALD E. MALLIN, 3 *LEGAL MALPRACTICE* Part VI, ch. 28, § 28:27 (2018 ed.). *But see* Phillip R. Bower & Tanya E. Stern, *Conflict of Interest? The Absolute Ban on Lawyer-Client Sexual Relationships Is Not Absolutely Necessary*, 16 *GEO. J. LEGAL ETHICS* 535, 543 (2003) ("[t]he bright-line ban on attorney-client relationships assumes that all female clients are vulnerable and takes freedom of association away from both the lawyer and the client").

<sup>31</sup> MODEL RULES OF PROF'L CONDUCT R. 1.7(b) (2018).

<sup>32</sup> MODEL RULES OF PROF'L CONDUCT R. 1.7(b)(2) (2018).

For example, in *Chief Disciplinary Counsel v. Zelotes*, attorney Zelotes met the woman who would become his client, Terry Aliano, while she and her husband were experiencing difficulty in their marriage.<sup>33</sup> Initially, Zelotes and his then-girlfriend began socializing with Aliano and her then-husband as couples. However, a relationship between Zelotes and Aliano grew as they began going on walks, to the movies and for drinks together, all without their respective significant others.<sup>34</sup> Zelotes subsequently kissed Aliano and three days later entered his appearance on her behalf in the Aliano's divorce action.<sup>35</sup>

Zelotes proudly admitted that he did not maintain a normal attorney-client relationship with Aliano.<sup>36</sup> Zelotes reasoned that because of his affection for Aliano, Zelotes would "go the extra mile" for his client.<sup>37</sup> The Connecticut Appellate Court disagreed, suspending Zelotes after finding that Zelotes violated Connecticut's version of Model Rule 1.7.<sup>38</sup> Zelotes had a concurrent conflict of interest under Rule 1.7 because there was a significant risk that Zelotes' representation of Aliano would be materially limited by his personal involvement with his client.<sup>39</sup>

Likewise in *People v. Beecher*, the Colorado Presiding Disciplinary Judge ("PDJ") found that an attorney had violated Colorado's version of Model Rule 1.7 by engaging in an intimate, nonsexual relationship with his client during the client's divorce.<sup>40</sup> Attorney Beecher began representing the client on a *pro bono* basis after the two met at a party.<sup>41</sup> Sometime thereafter, the client's adult children found photos of Beecher and the client from a trip they took together to Belize.<sup>42</sup> It was later learned that the client allowed Beecher to use the client's home as an

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<sup>33</sup> *Zelotes*, 98 A.3d at 858.

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> *Id.* at 865.

<sup>37</sup> *Id.*

<sup>38</sup> *Id.* at 866.

<sup>39</sup> *Id.*

<sup>40</sup> *People v. Beecher*, 224 P.3d 442, 444 (Colo. 2009).

<sup>41</sup> *Id.* at 445.

<sup>42</sup> *Id.*

office.<sup>43</sup> While doing so, Beecher kept at least one other client's files in the home office.<sup>44</sup>

The quality of Beecher's representation of the client was called into question after a series of heated depositions in the divorce action in which, among other things, Beecher's client was questioned about her relationship with Beecher.<sup>45</sup> In the subsequent disciplinary matter, both the client and Beecher maintained that the relationship was not sexual, but admitted that Beecher had slept in the same bed as the client and had taken a weeklong trip with the client to Belize.<sup>46</sup> Beecher testified that he did not find the relationship to be problematic because he had always had close relationships with his clients.<sup>47</sup> Further, he believed that despite the closeness of the relationship, because it did not involve sex, no conflict existed.<sup>48</sup>

In rejecting Beecher's rationale and imposing a suspension on Beecher, the PDJ held that Beecher saw himself as his client's protector rather than her counsel in her divorce action.<sup>49</sup> By doing so, Beecher lost all objectivity and independent judgment, the very qualities necessary to help a client navigate a challenging legal matter.<sup>50</sup> The fact that the relationship was not proven to be sexual was not important to the analysis; it was the close personal nature of the relationship and the consequences that flowed therefrom that influenced the outcome of the disciplinary matter.<sup>51</sup> As stated by the PDJ, Beecher's conduct was not "zealous legal representation; it was representation misdirected by intimacy and romance."<sup>52</sup>

*Zelotes* and, to a lesser extent, *Beecher* appear to share a common theme; i.e. the lawyer's belief that being emotionally closer to a client may benefit the client by rendering a lawyer more, not less, effective because that lawyer will be motivated to work harder for the client. But nothing in the Rules of Profes-

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<sup>43</sup> *Id.* at 446.

<sup>44</sup> *Id.*

<sup>45</sup> *Id.* at 447-48.

<sup>46</sup> *Id.*

<sup>47</sup> *Id.* at 448.

<sup>48</sup> *Id.* at 449.

<sup>49</sup> *Id.* at 450, 454.

<sup>50</sup> *Id.* at 450.

<sup>51</sup> *Id.*

<sup>52</sup> *Id.* at 451.

sional Conduct as they pertain to competence, objective reasoning, and independent judgment is stated in relative terms. A lawyer is bound to competently and diligently represent *all* of the lawyer's clients to the best of the attorney's ability. The lawyer must be the voice of objective reasoning and the legal analytical expert for all clients under all circumstances, not just those for whom the lawyer has a particular affinity. Indeed, by becoming emotionally invested in the client, the lawyer can quickly compromise his or her sound legal reasoning. Only when the lawyer remains emotionally detached and objective can the attorney best serve the client in the manner the client deserves and the profession demands.

### *C. Neglecting the Needy Client*

Another form of personal client relationship that may not be as shocking to the conscience as the sexual and intimate relationships discussed previously is the occasion when it is not the lawyer but the client who gets "too close" to the lawyer. Sometimes referred to as the "needy" or "high maintenance" client, this is the type of client who calls, emails, and texts the lawyer multiple times each day. It is the client who sees nothing wrong with reaching out to the lawyer at night, on weekends, and on holidays for non-emergency matters. It is the client who, after a time, can cause some lawyers to actually dread interacting with that client and, by extension, working on that client's case. And, again, given the emotionally charged climate of family law cases, most family practitioners regularly represent these types of clients and must recognize the potential ethical pitfalls of that representation.

In the case of the "needy" or "high maintenance" client, the ethical risk to the lawyer surfaces when the lawyer comes to dread interacting with the client so much that the lawyer avoids working on that client's case. That dread can translate into a breakdown in communication with the client, less enthusiasm in diligently working on the client's matter and, ultimately, a failure of competent representation. In other words, neglect of the client and the client's legal matter, and violations of some of the most fundamental tenants of client representation, which are outlined in Model Rules 1.4 (communication), 1.3 (diligence), and 1.1 (competence).

Succinctly put, Model Rule 1.4 requires a lawyer to communicate with his or her client.<sup>53</sup> The communications must be prompt, reasonable, and designed to inform the client of the status of the client's legal matter so that the client can make informed decisions regarding the representation.<sup>54</sup> Model Rule 1.3 requires a lawyer to act with reasonable diligence in representing a client.<sup>55</sup> A lawyer's duty of diligence is not excused due to "personal inconvenience to the lawyer."<sup>56</sup> Yet with the "needy," "high maintenance," or otherwise emotionally difficult client, a familiar pattern can develop where the lawyer puts off contacting or communicating with the client. In turn, that postponement of contact often leads to the postponement of work for the client's case and, eventually, a missed deadline, a hurried review of a document, or some other failure of basic competence.

Importantly, the lawyer's duties of communication, diligence, and competence are not excused just because the client is considered overly-demanding or more emotionally needy than any other client. That was the holding of the Supreme Court of Kansas in a disciplinary case styled *In the Matter of Seck*.<sup>57</sup> Attorney Seck's client retained Seck to complete a pending divorce action for a flat fee of one thousand dollars (\$1,000.00).<sup>58</sup> At the time that the client retained Seck, the procedural posture of the action indicated that settlement was imminent.<sup>59</sup> However, when settlement negotiations broke down, Seck's workload dramatically increased, as did his client's persistent demands.<sup>60</sup> Seck subsequently failed to communicate with the client and was dilatory in performing some of the work on the matter.<sup>61</sup> In issuing a public censure to Seck, the Kansas Supreme Court noted that "had [Seck] simply been more candid and more forceful in dealing with his client and advising her that he would get in touch with her when it came time to prepare for the trial, many of the

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<sup>53</sup> MODEL RULES OF PROF'L CONDUCT R. 1.4 (2018).

<sup>54</sup> *Id.*

<sup>55</sup> MODEL RULES OF PROF'L CONDUCT R. 1.3 (2018).

<sup>56</sup> *Id.* at cmt.[1].

<sup>57</sup> 874 P.2d 678 (Kan. 1994).

<sup>58</sup> *Id.* at 679.

<sup>59</sup> *Id.*

<sup>60</sup> *Id.*

<sup>61</sup> *Id.*

difficulties in evidence in this matter would have been resolved.”<sup>62</sup>

The lesson for any lawyer dealing with an emotionally difficult client is clear: diligently work on the matter regardless of what may be viewed as unreasonable client demands. However, family law practitioners will recognize all of the additional time and effort it takes to manage those demands. A lawyer faced with an emotionally difficult and/or unreasonable client should take steps to temper the client’s demands by doing just the opposite of what the lawyer may want to do, which may be to ignore that client’s case or avoid contact with them. Instead, the lawyer must communicate candidly with the client and help the client manage his or her expectations. By explaining the likely progressive steps associated with the representation, and the time attendant to those steps, the lawyer can often calm an otherwise anxious client. Likewise, the lawyer should set definite, firm boundaries with clients, explaining that the lawyer may not be able to immediately respond to every phone call or email and that is particularly true for “after business hour” contacts. If the client crosses these boundaries, the lawyer must be forthright with the client in explaining the importance of and reason for the boundaries. Ultimately, if the lawyer believes that the client’s representation will be compromised by the client’s conduct and the lawyer’s response to that conduct, the lawyer should consider whether to withdraw under the terms of Model Rule 1.16 before simply neglecting the matter.

### **III. Compassion Fatigue**

The ethical risks associated with becoming personally and emotionally enmeshed with a client and the client’s legal matter are not the only risks faced by the family law practitioner. Recently, the legal community has begun taking notice of the risks to lawyers’ mental health and well-being as a result of working with individuals who have been the victims of trauma, violence, and other emotionally draining matters.<sup>63</sup> As previously discussed, a lawyer’s continual exposure to the emotional upheaval

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<sup>62</sup> *Id.* at 679, 680.

<sup>63</sup> See, e.g., Christine Rainville, *Understanding Secondary Trauma: A Guide for Lawyers Working with Child Victims*, 34 ABA CHILD LAW PRACTICE

of others, and specifically the lawyer's clients, can lead to compassion fatigue.<sup>64</sup> Symptoms include those typically associated with depression or burnout.<sup>65</sup> But unlike depression, which may be chemically based in the lawyer's brain, compassion fatigue is related to the lawyer's work, both the type and the amount.<sup>66</sup> Some of these concerns can be addressed by setting boundaries and employing the same tools lawyers should use to ethically represent emotionally needy or otherwise difficult clients. However, in order to use those tools, lawyers must be aware of the potential damage posed by compassion fatigue. Moreover, unlike other professionals who are trained to recognize and deal with compassion fatigue, such as trauma specialists and mental health professionals, lawyers have no such training.<sup>67</sup>

Although awareness of compassion fatigue for lawyers appears to be on the rise, it is not a new phenomenon. Indeed, in 2003, Andrew P. Levin and Scott Greisberg published the results of a study they conducted on secondary trauma and burnout in lawyers from agencies specializing in domestic violence and family law, as well as legal aid organizations providing criminal law representation.<sup>68</sup> The lawyers' symptoms of secondary trauma and burnout were compared to mental health providers and social service workers of similar age and experience who also participated in the study.<sup>69</sup> The results revealed that the lawyers experienced more secondary trauma and burnout as compared to the other two comparison groups.<sup>70</sup> Specifically, the lawyers showed higher levels of "intrusive recollection of trauma materials, avoidance of reminders of the material and diminished pleasure and interest in activities, and difficulties with sleep, irritability, and concentration."<sup>71</sup> Those symptoms will likely

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9 (Sept. 2015); *Law and Life: Dealing with Compassion Fatigue*, 33 GPSOLO MAG. 5 (Robert M. Salkin ed. 2016).

<sup>64</sup> See *supra* note 6.

<sup>65</sup> David Donovan, *Compassion Fatigue: For Lawyers, the Well of Empathy Can Run Dry with Consequences*, DETROIT LEGAL NEWS (May 1, 2017).

<sup>66</sup> *Id.*

<sup>67</sup> *Law and Life; Dealing with Compassion Fatigue*, *supra* note 63.

<sup>68</sup> Andrew P. Levin & Scott Greisberg, *Vicarious Trauma in Attorneys*, 24 PACE L. REV. 245 (2003).

<sup>69</sup> *Id.* at 250.

<sup>70</sup> *Id.*

<sup>71</sup> *Id.*

sound familiar to many family law practitioners, but may often be ignored by lawyers who are busy trying to meet their ethical responsibilities and zealously represent clients.

At least one author has opined that the increasing specialization of the legal industry accounts for the increase in lawyer compassion fatigue.<sup>72</sup> A lawyer who has nothing but family law cases, with the attendant financial and emotional upheaval that often involves small children, lacks a balanced caseload that includes matters in which client satisfaction and a positive outcome are more frequently achieved.<sup>73</sup> Further, the lawyers involved in the Levin and Greisberg study reported that part of the problem stemmed from the fact that the lawyers had become “over-extended with their clients,” including contacts after hours and becoming overly-involved in the clients’ needs for housing, benefits and other similar matters.<sup>74</sup>

The increasing awareness of the emotional toll that compassion fatigue can take on lawyers comes at a time when the legal profession is likewise taking greater notice of the overall personal challenges faced by lawyers.<sup>75</sup> But in addition to the emotional toll that compassion fatigue can take on a lawyer, compassion fatigue can lead to client avoidance and difficulty making decisions.<sup>76</sup> Of course, client avoidance and paralysis in making decisions and working on client matters places the attorney at risk of violating the attorney’s duties. This can become a vicious cycle in which family law practitioners strive to meet their ethical obligations and to manage the emotional needs of their clients but do not realize the emotional damage they have sus-

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<sup>72</sup> Donovan, *supra* note 65.

<sup>73</sup> *Id.*

<sup>74</sup> Levin & Greisberg, *supra* note 68, at 251.

<sup>75</sup> Recent studies have confirmed what lawyers have anecdotally believed for years; i.e. that the practice of law can result in significant personal health challenges for lawyers. For example, the results of recent research conducted by the Hazelden-Betty Ford Foundation revealed that between 21% and 36% of lawyers qualify as problem drinkers, and that approximately 28%, 19%, and 23% struggle with some level of depression, anxiety, and stress, respectively. Patrick R. Krill, et al., *The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys*, 10 J. ADDICTION MED. 46 (Feb. 2016), [https://journals.lww.com/journaladdictionmedicine/Fulltext/2016/02000/The\\_Prevalence\\_of\\_Substance\\_Use\\_and\\_Other\\_Mental.8.aspx](https://journals.lww.com/journaladdictionmedicine/Fulltext/2016/02000/The_Prevalence_of_Substance_Use_and_Other_Mental.8.aspx).

<sup>76</sup> Donovan, *supra* note 65.

tained in doing so. In turn, the resultant damage prevents lawyers from being able to meet those very obligations.

#### **IV. Conclusion**

What is the advice for lawyers? First, recognize that lawyers working in family law are exposed to individuals who are often dealing with one of the most stressful events of their lives and an incredibly wide variety of attendant emotions. Be aware, not only of the strict prohibitions against sexual relationships with clients, but also of the more insidious ways that personal relationships can hinder ethical and professional representation. Any intimate relationship with a client has the potential to create a conflict of interest or breach of a lawyer's fundamental fiduciary duty to their client. In turn, the lack of objectivity in an attorney, or potentially negative feelings that arise from the termination of a personal relationship, may cause a breakdown in some of the most basic duties to a client: communication; diligence; and, competence. Recognize that those same basic duties are often implicated when the pendulum of the lawyer's personal relationship with the client swings the other way and the lawyer avoids dealing with needy or emotional clients. Creating strong boundaries and setting clear expectations for representation can help any lawyer, but especially the family law practitioner, manage the entire spectrum of personal client relationships.

Second, understand that a client's emotional trauma need not be adopted by the lawyer in order for the lawyer to be a zealous advocate. It is critical that lawyers apply the appropriate boundaries with clients and avoid becoming enmeshed in their clients' emotional turmoil and running afoul of some of the rules and/or ethical obligations discussed earlier in this article. Lawyers should make time for activities, hobbies, and other non-work outlets a priority. In other words, lawyers should strive to bring a balance between work and personal life. Of course, if the challenges become overwhelming, a lawyer should seek help. As aptly noted in a report addressing the steps the profession needs to take to address the personal challenges lawyers face, "[t]o be a good lawyer, one has to be a healthy lawyer."<sup>77</sup>

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<sup>77</sup> Bree Buchanan & James C. et al., *The Path to Lawyer Well-Being: Practical Recommendations for Positive Change*, AMERICANBAR.ORG 1 (Aug.

Clearly understanding the ethical pitfalls that surround personal relationships with clients, while making time to care for themselves and for their clients, can prevent family law practitioners from becoming the butt of yet another unamusing lawyer joke.

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14, 2017), <https://www.americanbar.org/content/dam/aba/images/abanews/ThePathToLawyerWellBeingReportRevFINAL.pdf>.

